

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

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901 N. FIFTH STREET

KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

In the Matter of:)	Docket No. CAA-07-2003-0007
Palmer Manufacturing and)	
Tank Incorporated)	ADMINISTRATIVE
2814 West Jones Avenue)	ORDER TO COMPLY
Garden City, Kansas 67846)	

ADMINISTRATIVE COMPLIANCE ORDER

I. INTRODUCTION

1. Pursuant to Sections 113(a)(1)(A) and 113(a)(3)(B) of the Clean Air Act (CAA, or "the Act"), 42 U.S.C. §§ 7413(a)(1)(A) and (a)(3)(B), the Administrator of the United States Environmental Protection Agency (EPA) is authorized to issue an Order to Comply to any person found in violation of any requirement of an applicable state implementation plan (SIP) or permit.

II. LEGAL AND FACTUAL BACKGROUND

2. The Kansas Air Quality Regulations provide definitions at K.A.R. 28-19-200, which were adopted as part of the federally approved Kansas SIP, approved by EPA pursuant to Section 110 of the CAA, 42 U.S.C. § 7410. Specifically, at 28-19-200(kk)(1), the Kansas SIP defines "major source" as a "stationary source" that emits or has the potential to emit more than 10 tons per year of any hazardous air pollutant, or 25 tons per year of any combination of hazardous air pollutants.

3. At K.A.R. 28-19-500(a)(1), the Kansas Air Quality Regulations require a "major source" to obtain a "Class I" operating permit. However, K.A.R. 28-19-500(b) and 28-19-540 state a stationary source may avoid obtaining a "Class I" permit by electing to reduce its potential to emit through any physical or operational limitation required by a "Class II" operating permit. These requirements were adopted as part of the federally approved Kansas SIP, approved and enforceable by EPA pursuant to Section 110 of the CAA, 42 U.S.C. § 7410.

4. At K.A.R. 28-19-517, the Kansas Air Quality Regulations require that by April 1st of each year the owner or operator of any stationary source, which is required to apply for a Class I operating permit, submit to the KDHE all operating or other relevant information deemed necessary by the department to estimate actual air emissions from the stationary source for the preceding year.

5. At K.A.R. 28-19-202, the Kansas Air Quality Regulations require the owner or operator of each stationary source file annual emission estimates and to pay an "emissions fee" if the source has actual emissions of 10 tons per year or more of any single hazardous air pollutant; or 25 tons per year or more of any combination of hazardous air pollutants, whichever is greater.

6. On or about June 2, 1998, the Kansas Department of Health and Environment (KDHE) issued Palmer Tank a Class II operating permit (Permit No. 0550055) for its facility in Garden City, Kansas. This permit imposes record keeping, reporting requirements and emissions limitations which incorporate the requirements of the Kansas SIP, including but not limited to the following:

- Emission Limitation Requirement #1 (page 2 of the permit) incorporates the requirements of the Kansas SIP found at 28-19-200(kk)(1), 28-19-500(a)(1), 28-19-500(b), 28-19-540 and 28-19-543; and requires that emissions from Palmer Tank's facility of any Hazardous Air Pollutant (HAP) be less than 10 tons during each consecutive 12 month period, calculated and updated monthly; and for any combination of HAPs, emissions be less than 25 tons during each consecutive 12 month period, calculated and updated monthly.

7. For each of the 12-month periods ending between August 2001 and November 2001, Palmer Tank's emissions of styrene exceeded Emissions Limitation Requirement #1 within its Class II operating permit (10 tons per year), which is a violation of an applicable state implementation plan, specifically K.A.R. 28-19-500(a)(1), 28-19-500(b), 28-19-540 and 28-19-543, each approved by EPA pursuant to Section 110 of the CAA, 42 U.S.C. § 7410.

8. On or about July 12, 2002, EPA issued Palmer Tank a notice of violation (NOV) that notified Palmer Tank that the company was in violation of the terms of the Kansas SIP and its Class II operating permit (Permit No. 0550055).

9. For the calendar year 2001, Respondent Palmer Tank failed to complete and file an annual emissions inventory estimate or forms, as required by K.A.R. 28-19-517. Further, for the year 2001, Palmer Tank failed to pay the annual emissions inventory fees, as required by K.A.R. 28-19-202.

III. ORDER

10. Pursuant to Sections 113(a)(1)(A) and 113(a)(3)(B) of the CAA, 42 U.S.C. §§ 7413(a)(1)(A) and (a)(3)(B), Respondent Palmer Manufacturing and Tank Incorporated (Palmer Tank) is hereby ordered to comply with the requirements of Section 110 of the CAA, 42 U.S.C. § 7410, and 40 C.F.R. § 52.872, and the requirements of K.A.R. 28-19-202, and 28-19-500 to 28-19-563. Specifically, Palmer Tank is hereby ordered to:

- a. No later than December 1, 2002, submit a "Class I" operating permit application, completed pursuant to the requirements of K.A.R. 28-19-511, to the Kansas Department of Health and Environment (KDHE).
- b. No later than December 1, 2002, submit annual emission inventory estimates for the calendar year 2001 to KDHE, completed pursuant to the requirements of K.A.R. 28-19-517 and 28-19-202.
- c. No later than December 1, 2002, submit any required emission inventory fees for the calendar year 2001 to KDHE, in accordance with the requirements of K.A.R. 28-19-202.
- d. All submissions to KDHE required by this Order shall be addressed and submitted to:

Mr. Amer Safadi
Air Operating Permits
Kansas Department of Health and Environment
1000 S.W. Jackson, Suite 300
Topeka, Kansas 66612
- e. No later than December 1, 2002, copies of the permit application, emissions estimates and fee checks submitted to KDHE pursuant to this Order shall also be submitted to EPA. These copies shall be addressed and submitted to:

Ms. Lynn Slugantz
Air, RCRA and Toxics Division
901 N. 5th St.
Kansas City, Kansas 66101

11. Sections 113(a)(1)(A) and 113(a)(3)(B) of the CAA, 42 U.S.C. §§ 7413(a)(1)(A) and (a)(3)(B), grant EPA the authority to issue an Order to Comply to any person who has violated the Act and the regulations promulgated pursuant thereto.

12. Failure to comply with any of the provisions of this Order may result in an enforcement

action under Section 113 of the CAA, 42 U.S.C. § 7413. Under Section 113(a) of the Act, the Administrator is authorized to address such a violation as follows:

- a. Issue an administrative penalty order assessing a civil penalty not to exceed \$27,500 per day of violation;
- b. Commence a civil action for permanent or temporary injunction, or to assess and recover a civil penalty not to exceed \$27,500 per day of violation, or both; or
- c. Request the Attorney General to commence a criminal action pursuant to Section 113 of the Act.

13. Issuance of this Order does not preclude the State of Kansas or EPA from assessing penalties or taking any other action authorized under the Act. This Order does not affect the obligation of Palmer Tank to comply with all federal, state and local statutes, regulations and permits.

14. This Order shall become effective immediately upon Palmer Tank's receipt of the Order unless, within five (5) business days of receipt hereof, Palmer Tank submits a written request for a conference with EPA. In such event, the effective date of the Order shall be extended until after the date of such conference to a time to be established by EPA. To request such a conference, contact Howard Bunch, Office of Regional Counsel, EPA Region VII, 901 N. Fifth Street, Kansas City, Kansas 66101 (telephone, 913-551-7879).

15. All information and documents submitted by Palmer Tank to EPA pursuant to this Order shall be subject to public inspection unless identified as confidential by Palmer Tank in accordance with the requirements of 40 C.F.R. Part 2. Information and documents so identified will be disclosed only in accordance with the provisions of 40 C.F.R. Part 2.

William A. Spratlin
William A. Spratlin, Director
Air, RCRA, and Toxics Division

10/30/02
Date

CERTIFICATION OF SERVICE

I certify that the original and one true copy of the foregoing Complaint were hand-delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas 66106; and a true and correct copy of the foregoing Administrative Compliance Order were mailed by certified mail, return receipt requested on this 31st day of Oct, 2002, to:

Cecil O'Brate
Registered Agent for Service
Palmer Manufacturing and Tank, Incorporated
2814 W. Jones Avenue
Garden City, KS 67846-0000

Abby White